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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,986	08/25/2006	Tor Brekke	2868.0010001/MAC	2477
26111 7590 12/01/2010 STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005				
EXAMINER BAUER, CASSEY D				
ART UNIT		PAPER NUMBER		
3784				
MAIL DATE		DELIVERY MODE		
12/01/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/552,986

**Applicant(s)**

BREKKE, TOR

**Examiner**

Cassey Bauer

**Art Unit**

3784

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 17 November 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Cheryl J. Tyler/  
Supervisory Patent Examiner, Art Unit 3744

/Cassey Bauer/  
Examiner, Art Unit 3784

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments with respect to claims 18-25, 28-30 and 35, beginning on page 8 of the response that there would not have been an expectation for success that the system of Clark would circulate an ice slurry has been considered but is not persuasive. Applicant argues that the system of Clark would not circulate and ice slurry because the diffuser wall would act as a filter to filter ice particles. The examiner maintains that although larger pieces of ice may be filtered by the diffuser wall, smaller pieces of ice would be able to fit through the diffuser holes and circulate about the tank to meet the claimed limitations.

Applicant's arguments beginning on page 9 of the response that there is insufficient reasoning to circulate an ice slurry in an overflow back into the treatment tank has been considered but is not persuasive. The Applicant claims that the ice outlet of Goldstein contains only ice and not an ice slurry. However, the rejection of claim 18 is based on the modification of Clark by Miller and Goldstein. Goldstein is not being modified by Clark. When Clark is modified by Miller to include an ice slurry circulating through the tank, an ice slurry will indeed be present in the overflow (136) of Clark to meet the claimed limitations. Further, the examiner provided reasoning based not only on the disclosure of Goldstein but also on what one skilled in the art would consider common knowledge (i.e. utilizing residual cooling effect and eliminating the need for disposing of the ice slurry solution). Therefore the examiner believes that the teaching of Goldstein and common knowledge provides the necessary motivation for arriving at the claimed invention.

Applicant's arguments beginning on page 10 of the response that the system of Clark as modified by Goldstein would destroy the ability of Clark to perform its intended function has been considered but is not persuasive. Applicant claims that in order to modify Clark by Goldstein, it would be necessary to include ice bed 17, 17A, or 17' and therefore the apparatus of Clark could no longer function to heat the contents. However, the examiner disagrees. To modify Clark by Goldstein to meet the claims would require nothing more than the pump (44') and the inlet pipe (48') to pump any slurry present in the overflow (136) of Clark back into the treatment tank. Adding the pump and inlet pipe of Goldstein to the overflow pipe of Clark, in no way prevents the apparatus of Clark from functioning as a heater.

In response to Applicant's arguments beginning on page 11 of the response that modifying Clark by Goldstein would unnecessarily complicate the system has been considered but is not persuasive. Applicant should note that it has been held that simplicity of the prior art is rarely a characteristic that weighs against obviousness of a more complicated device with added function, see MPEP 2143.01 V. Since complicating the structure of Clark adds the function of recirculating ice slurry present in the overflow back into the tank, one skilled in the art would understand that the combination would be advantageous over the more simple structure of Clark which does not have the capability of recycling the overflow and the combination is therefore obvious.

Therefore, the rejection of claims 18-25, 28-30 and 35 are proper and remains.

Applicant's arguments beginning on page 12 of the response with respect to claims 31-34 and 36 have been considered but are not persuasive. Applicant's arguments for claims 31-34 and 36 are substantially the same arguments with respect to claims 18-25, 28-30 and 35 and have been addressed above.

Therefore the rejection of claims 31-34 and 36 are proper and remain.